IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 3267 of 2003

(AGAINST C.C. NO. 609/2002 OF THE J.F.C.M. COURT, THALASSERY)
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PETITIONERS/ACCUSED NOS. 1 TO 5:
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1. **S.SREEKANTH S/O. SREEDHARAN NAIR,**
   PROPRIETOR, SAI HOMES AND RESORTS,N.B.C.ROAD,
   AMBALAMUKKU, TRIVANDRUM
   PERMANENTLY RESIDING AT SAI RESORTS, 26-C,
   KELSO ROAD, OOTACAMUND-2

2. **S.KASTHURI, W/O. SREEKANTH, PROPRIETOR,**
   SAI HOMES AND RESORTS, N.B.C. ROAD,
   AMBALAMUKKU, TRIVANDRUM
   PERMANENTLY RESIDING AT SAI RESORTS, 26-C,
   KELSO ROAD, OOTACAMUND-2

3. **PRADEEP KANDAMATH S/O. SREEKANTH,**
   PROPRIETOR, SAI HOMES AND RESORTS, N.B.C.ROAD,
   AMBALAMUKKU, TRIVANDRUM.
   PERMANENTLY RESIDING AT SAI RESORTS, 26-C
   KELSO ROAD, OOTACOMUND-2

4. **SREEDHAR KANDAMATH S/O. SREEKANTH,**
   PROPRIETOR, SAI HOMES AND RESORTS, N.B.C. ROAD,
   AMBALAMUKKU, TRIVANDRUM.
   PERMANENTLY RESIDING AT SAI RESORTS, 26-C,
   KELSO ROAD, OOTACAMUND-2.

5. **V.MURALEEDHARAN NAIR, MANGER, SAI HOMES**
   AND RESORTS, AMBADI, THAMALAM, POOJAPPURA,
   TRIVANDRUM
   PERMANENTLY RESIDING AT SAI RESORTS, 26-C,
   KELSO ROAD, OOTACAMUND-2.

BY ADV. SRI.S.GOPAKUMARAN NAIR

CRL.M.C. NO. 3267/2003:

RESPONDENTS/COMPLAINANT:
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1. **K.RAMESH S/O. NARAYANN, CHETTAMKUNNU THALASSERY AMSOM, VADIKKAKAM DESOM, THALASSERY TALUK**

2. **STATE- REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY ADV. SMT.SREELEKHA PUTHALATH.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09/10/2007,THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 3997/2003 IN CRL.M.C. NO. 3267/2003

DISMISSED

15/10/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

CRL.M.C.NO. 3267 OF 2003

DATED THIS THE 15TH OCTOBER 2007

ORDER

Petitioners are accused 1 to 5 in C.C.No.609/2002 in the Court of Judicial First Class Magistrate, Thalassery with respect to the offence under Sections 120 B, 405, 420 read with Section 149 I.P.C. They have sought for getting quashed the above proceedings alleging that the same amounted to abuse of process of the court.

2. The prosecution case is that the accused engaged in real estate and construction business under the name Sai Homes and Resorts, contacted the de facto complainant by coming to his house in Thalassery in March 1994 and showing the brochures of condominiums and flats that he is constructing at Ootty and Capecomerin, made him to purchase two condominiums at Ootty and one flat at Capecomerin. The de facto complainant who is a N.R.I. paid 18 lakhhs for the purchase of two condominiums at Ootty and one flat at Capecomerin. Although agreement was executed handing over possession of the buildings and a sale deed at Kottaram Sub Registry office at Kanyakumari, antecedent documents were not handed over nor the actual possession. Enquiries revealed that the lands wherein the constructions are made did not belong to the

accused persons. It is alleged that the brother of the de facto complainant was also cheated likewise.

3. It is the contention of the petitioners who are the wife and sons of the first petitioner and the Manager of the concern that the first respondent/de facto complainant and his brother had lodged joint compliant before the Circle Inspector of Police, Museum Police Station, Thiruvananthapuram on 27-11-1998 making the same allegations and the same is suppressed. Nothing is mentioned about the same in the present compliant. The true copy of the agreement executed between the petitioner and the first respondent is also produced. It is contended that Thalassery court has no jurisdiction as the sale deed has been executed at Kanyakumari. It is also pointed out that another proceedings, O.P.No.49/2000, has been instituted by the first respondent before the Kerala State Consumer Disputes Redressal Commission, and that the same is pending. Copy of the said petition and written statement filed by the petitioner are also produced. It is alleged that the reason for initiation of the proceedings is the refusal of the petitioner to return the amount as the de facto complainant thought that the tourist flow to Ootty and Capecomerin is not sufficiently large as he had expected.

4. At the time of hearing it was also contended that the allegations in the complaint is against the first petitioner who is mentioned as the owner of Sai Homes and Resorts and the 5th petitioner as the Manager and hence making the wife and sons of the first petitioner/accused is uncalled for. It is also pointed out that the police complaint was referred and hence the protest complaint is filed. The petitioner has also produced Annexure-II refer report.

5. As contended by counsel for the respondent, it is mentioned in Annexure-II refer report that it was found that the land owner is one Latha Menon and not the first respondent. It is also seen from the allegations made in the complaint that the sale deed was executed by the first respondent and his wife. Hence the allegation that all the accused entered into criminal conspiracy and cheated the complainant. It is also seen from Anenxure-II compliant that the D.Ds of certain amounts were sent in the name of the sons of the first petitioner, i.e. petitioners 3 and 4. The 5th petitioner is the Manager. Hence, I find that the contention that the wife and sons of the first petitioner have no role in the transaction cannot be discarded at this stage. In view of the specific allegations that the enticement took place at Thalassery, at the house of the first respondent, the

contention that Thalassery court has no jurisdiction cannot be the basis to quash the complaint. Counsel for the respondent has relied on the decision in **Indian Oil Corpn**. v. **NEPC India Ltd.**, **(2006)6 S.C.C.736** wherein the court has held that the fact that civil remedy is available and even if availed of, remedy under the criminal law is not barred, if the allegations disclosed a criminal offence and if the allegations contained in the compliant, taken on their face value, if, on facts, constituted offence under the Penal Code. The complaint has to be examined as a whole. A detailed enquiry or a meticulous analysis of the materials or an assessment of the reliability or genuineness of the allegations in the complaint is not warranted. In the circumstances, I find that the prayer to quash the proceedings in C.C.No.609/2002 in the Court of Judicial First Class Magistrate, Thalassery cannot be entertained. The court below is directed to dispose of the matter on merits on the basis of the evidence adduced unrammelled by observations, if any, contained in this order. The Crl.M.C.is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NO. 367 OF 2003

ORDER

15-10-2007